risk insurers are liable, although the immediate cause was stranding or collision. An explanation, if not a justification, of the English view, the writer finds in the fact that the separation of the two risks in England was made piecemeal, while on the Continent it was made complete at once. In England first the clause "free from capture, seizure, and detention," was introduced. This exception was, in accordance with contract law, narrowly construed, and damage caused in an attempt to avoid capture was held to be covered by the policy. Now the excepting clause has been enlarged so as to include attempts at seizure and all consequences of popular uprisings and operations of war, and special war risk policies stipulate to cover all risks included in the clause. But, with what seems to the French writer excessive respect for precedent, the English courts have maintained their narrow interpretation, and he thinks the rule so well settled that it will be long before there is any change.

ANTICIPATORY BREACH. — In a late article upon this subject, the writer, while disclaiming any effort to justify in theory the general rule allowing recovery by one party before the time of performance, on repudiation by the other, discusses the grounds on which that doctrine seems to rest. *The Doctrine of Anticipatory Breach*, by Colin P. Campbell, 60 Cent. L. J. 64 (Jan. 27, 1905). He points out that these decisions have been based on two different views of the situation. The first, which is illustrated in Hochster *v.* De la Tour (2 E. & B. 678) is that the action is based on an implied undertaking in the original contract, to do nothing inconsistent with the contractual relation before the time of performance. This he attacks on two grounds, — the general one applicable to any theory justifying anticipatory breach, that the doctrine does not seem to extend to commercial paper; and the particular objection, that the damages recovered must be very slight, representing only the breach of the implied contract, since the contract to perform is still unbroken. The latter argument is hardly valid, since in all contracts involving several promises to be performed at different times, a breach of the first, if it would naturally lead to the abandonment of the others, is sufficient foundation for a recovery of damages based on a breach of all the obligations, though the time for the performance of some has not yet arrived. "This is law where the doctrine of Hochster *v.* De la Tour is denied, as well as where it is admitted." See 14 HARV. L. REV. 435 and cases cited. The main difficulty with the explanation based on the implied promise is the difficulty of finding the promise, and the fact that, in cases where the parties, after repudiation, decide to go on and complete, no action, even for nominal damages, seems ever to have been allowed for the breach of such an implied obligation.

As the real ground of the decisions, the author elaborates the view suggested in Johnstone *v.* Milling (16 Q. B. D. 460), that the repudiation by one party amounts to an offer of rescission, which, when accepted by action thereon by the other, makes a binding contract rescinding the old, in which new contract the law will imply a promise on the part of the one in default, to pay all damages resulting from the destruction of the original agreement. If there were such rescission, it would certainly prevent recovery on the ground first set forth, since the implied promise, if it ever existed, would then be superseded, but it is perhaps difficult to see an offer and acceptance in the repudiation and action upon it. Nor does the view furnish a satisfactory explanation of the decisions. Action has uniformly been brought, and recovery had, on the original contract, not on a second one, so that we have no precedent for implying any obligation in the contract for rescission. It may be contended that the declaration in such a case contains facts which the courts will construe into two contracts, allowing recovery on the second. But it is difficult to see how, in a case where bringing the action is the sole act which could be construed as an acceptance, the declaration which alleges only the repudiation by the defendant sets forth any second contract. The article is interesting and well argued, but the new explanation seems to be more involved than the old, and to rest on no firmer foundation. See 14 HARV. L. REV. 428 *et seq.*